



# BUYING AND SELLING A HOME

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*\*\* Air Force Attorneys are prohibited from representing individuals in real estate transactions \*\**

## **Overview**

The purchase or sale of a home is one of the largest transactions that an individual makes during a lifetime. The assistance of a qualified real estate agent can transform complex negotiations into a most rewarding endeavor for buyer and seller. Visit the Hanscom Housing Office prior to house hunting. This office provides general guidance regarding buying and selling a home. Once you secure a civilian attorney, the legal office can no longer provide guidance and advice relating to the real estate transaction. To do so might interfere with an existing attorney-client relationship and may violate the rules of ethics which governs the conduct of attorneys.

## **Role of the Real Estate Agent**

*Exclusive Listing Agreements* – Although there are several different types of listings for the sale of real property that an owner may give a broker, the most common in Massachusetts is an "exclusive right to sell" agreement. Under an "exclusive right to sell" agreement the listing broker is given the right to earn a fee for professional services if the property is sold by anyone, including to a buyer located solely through the efforts of the owner.

*Multiple Listing Service* – Where a buyer works with a real estate agent who participates in a multiple listing service ("MLS"), the agent can cooperate in showing a buyer any property in the MLS, even though it may have been listed through another office.

*Agency Relationship* – Whether you are the buyer or the seller you can choose to have the advice, assistance and representation of your own agent. Do not assume that a broker is acting on your behalf unless you have contracted with that broker to represent you. If you are a seller you may authorize your listing agent to cooperate with agents from other firms to help sell your property. These cooperating agents may be subagents who

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represent a seller or be agents of buyers. A seller can generally obtain broader exposure for a property by authorizing a listing broker to compensate a cooperating agent who successfully procures a buyer. If you are a buyer you have the option of working with a seller's agent or buyer's agent. The decision will depend upon the types of services you desire and the method of compensating the agent. A broker who is representing a buyer and shows that buyer a property listed with the broker's office is said to be a "dual agent". Dual agency is permissible provided that both buyer and seller have given informed consent. The duties of a real estate licensee do not relieve the consumer of the responsibility to protect his/her own interest. If advice is desired regarding legal, tax, insurance or other matters, a professional in those areas should be consulted. Regulations of the Board of Registration of Real Estate Brokers and Salespersons require that written notice of the agency relationship of a real estate agent be provided to buyers and sellers at the first personal meeting to discuss a specific property. The buyer and seller are asked to sign an acknowledgement of receipt of the notice.

Real estate agents **are not** inspectors and do not guarantee property condition. Real estate agents are not trained to find structural, electrical, plumbing, septic and other problems with a home or land and do not guarantee the condition of property they sell. In general, agents have no duty to inspect a property for defects and have no duty to verify information received from sellers, municipal departments or other reputable sources. Naturally, real estate agents may not "knowingly (make) any substantial misrepresentation" (MGL c. 112 section 87AAA(a)). Agents have no liability for innocently passing along to buyers information from reputable sources, even if it is later determined to be inaccurate. Agents who provide buyers with names of lawyers, accountants or other professionals do not automatically guarantee the accuracy of the reports of those professionals. Since May 1, 2001 home inspectors have been required to be licensed by the commonwealth and to carry errors & omissions insurance. A complete list of all licensed home inspectors is available from the state's Division of Professional Licensure.

### **Seller's Rights and Responsibilities**

*Right To Accept Terms Of Listing* – The seller has the absolute right to set the listing price. The real estate agent may prepare an "opinion of value" to assist the seller in setting the price. An agent may refuse to accept a listing for any lawful reason.

*Right To Have All Offers Presented* – By law, real estate agents are required to present all offers to a seller. The Massachusetts Board of Registration of Real Estate Brokers And Salespersons interprets this obligation as continuing until an agreement has been signed. Normally real estate agents will not solicit buyers or continue to show property after acceptance of an offer, unless otherwise agreed. Even if a buyer makes an offer for the full listing price, the buyer cannot usually require the seller to accept, since listing prices are considered invitations to bid.

*Nature of Seller's Duties to Condition of the Property*--Every seller has the duty to respond fully and accurately to any request for information about a property. This is true

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whether the information is requested directly by a prospective buyer or by a real estate agent who, in turn, may pass along the information to a prospective buyer. Answers that are misleading or are half-truths are improper. If a seller is unsure of information, the seller should not guess, but should qualify his answer. Otherwise, the buyer may be misled. Sellers may be required to provide information about the presence of lead paint or urea formaldehyde foam insulation, where applicable.

*Septic Systems And Cesspools* – Massachusetts environmental regulations require that a property which is serviced by a septic system, cesspool or other private waste disposal system be inspected within two (2) years before sale (three (3) years if pumped at least once each year) or within six (6) months after sale (if weather conditions prevent a pre-sale inspection). Only licensed inspectors and soil evaluators may conduct such inspections. Should a system fail an inspection, the buyer and seller may negotiate who will pay to repair or replace the system or, if the agreement for sale contains a contingency, the buyer may decide to withdraw. The fact that a system passes a Title 5 inspection is not a guarantee that the system will continue to function properly. Even a properly maintained system may only last an average of 15 to 20 years.

*Smoke Detector Certificates* – Massachusetts law requires that all residential structures be equipped with approved smoke detectors upon sale. The local fire department will issue a certificate to prove compliance.

### **Buyer's Rights and Responsibilities**

*Condition of Property* – A buyer may wish to employ a professional home inspector, lead paint inspector, termite/pest inspector, sewage/septic system inspector, engineer or other expert of his choice to evaluate the property as a condition of an offer. Massachusetts law does not automatically give buyers the right to a home inspection. If the buyer desires that the obligation to purchase be contingent upon an inspection, the buyer should include an inspection contingency in any offer. The buyer may also wish to check public records to verify information concerning taxes or assessed value, zoning and history of work performed.

*Lead Paint, Hazardous Or Toxic Materials* – In purchasing any property the buyer may wish to conduct special tests to determine the presence of toxic or hazardous materials. These include lead paint, radon, airborne asbestos, urea formaldehyde foam insulation ("UFFI"), oil spillage etc. Information from the Department of Public Health will be supplied to you concerning lead paint and UFFI, where applicable. For residences built before 1978 Massachusetts and federal law provide that buyers be given the right to take up to ten (10) days to inspect a property for the presence of lead paint. This right may be waived. High levels of lead may result in brain damage or other serious injuries to children. Massachusetts law does not prohibit the sale of properties containing lead point or other potentially hazardous substances.

*Fair Housing Laws* – Real estate agents and sellers are required by state and federal law to treat all parties in a property transaction equally and without regard to race, religious

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creed, color, national origin, gender, sexual orientation, age, genetic information, ancestry, marital status, presence of children, military service/veteran status or receipt of public assistance or physical or mental disabilities.

### **Legal Requirements for Transaction**

*Contract Requirements* – Agreements for the purchase of real property generally must be in writing and be signed to be enforceable. An offer signed by the buyer that includes all essential terms and which is accepted and signed by the seller can constitute a binding contract. A written counteroffer made by the seller that is accepted in writing by the buyer can also constitute a binding agreement. Many real estate agents have forms of such agreements for use by clients and customers. Often a more detailed agreement known as a "Purchase And Sale Agreement" ("P&S") will be signed by the buyer and seller after an offer has been accepted. The P&S will then replace the earlier agreement. If you are unsure of your risks and responsibilities under any proposed agreement you should contact a qualified attorney to assist you.

*Deposit By The Buyer* – It is customary for a buyer to give a deposit or binder as a show of good faith at the time an offer is presented. While the amount is negotiable, it is typically 5 percent to 10 percent of the purchase price. Normally this deposit is held in escrow, but not deposited until the seller has accepted the buyer's offer.

*Mortgages And Financing Contingency* – If it will be necessary to obtain institutional financing for the purchase, the buyer must fall within lender's guidelines to qualify for a loan. Loan packages, mortgage interest rates, points (pre-paid interest or administrative fees) and terms vary from one financial institution to another and will be adjusted from time to time. If institutional financing for a purchase is required, the buyer may wish to make an offer contingent upon receipt of a mortgage commitment within a specified period of time. Careful compliance with the exact conditions in a mortgage contingency clause is crucial.

*Title Examination And Title Insurance* – Most banks and mortgage lenders require that an examination of the seller's title to the property be conducted to determine if the property is marketable and will provide adequate security for the loan it is making. Lenders generally require title insurance up to the amount of the loan and for an additional fee, title insurance can be obtained to protect the portion of the purchase price that the buyer paid.

For further information visit the Massachusetts Office of Consumer Affairs at [www.mass.gov/oca](http://www.mass.gov/oca).

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